

REMARKS

Claims 57-74 are pending. Claims 65, 67, and 71 have been amended. No new matter has been added.

Claim Rejections - 35 U.S.C. § 112, second paragraph

Claims 65 and 71 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 65 and 71 have been amended to recite, in relevant part, a chemokine polypeptide comprising SEQ ID NO:1 from amino acid 22 to amino acid 328. It is believed this overcomes the rejection.

Rejections for Obviousness-Type Double-Patenting

Claims 57-74 have been rejected for nonstatutory obviousness-type double-patenting in view of claims 1-17 of U.S. Pat. No. 6,730,296 ("the '296 patent"). The rejection is traversed.

In an obviousness-type double-patenting analysis, the claim or claims in the earlier patent and the claim or claims in the later patent application are compared, and their differences determined. See, e.g., Georgia-Pacific Corp. v. United States Gypsum Co., 195 F.3d 1322, 1326, 52 USPQ2d 1590, 1593 (Fed. Cir. 1999). The next step in the analysis involves determining whether the differences in subject matter between the two claims render the claims patentably distinct. Id. at 1327, 52 USPQ2d at 1595. A later claim that is not patentably distinct from an earlier claim in a commonly owned patent is invalid for obvious-type double patenting. In re Berg, 140 F.3d 1428, 1431, 46 USPQ2d 1226, 1229 (Fed. Cir. 1998).

Claims 1-17 of the '296 patent include 2 independent claims:

1. A polypeptide produced according to a process comprising: (a) growing a culture of a host cell in a suitable culture medium, wherein the host cell has been transformed with a polynucleotide comprising at least one expression control sequence, wherein the polynucleotide encodes a chimeric polypeptide, the chimeric polypeptide comprising at least one chemokine polypeptide covalently attached to at least one heterologous polypeptide, wherein the chemokine polypeptide comprises an amino acid sequence selected from the group consisting of: (aa) SEQ ID NO:1; (ab) SEQ ID NO:1 from amino acid 20 to amino acid 328; (ac) SEQ ID NO:1 from amino acid 21 to amino acid 328; (ad) SEQ ID NO:1 from amino acid 22 to amino acid 328; (ae) SEQ ID NO:3; and (af) SEQ ID NO:3 from amino acid 20 to amino acid 326, and (b) purifying said polypeptide from the culture.

2. A composition comprising a chimeric polypeptide, the chimeric polypeptide comprising at least one chemokine polypeptide covalently attached to at least one heterologous polypeptide, wherein the chemokine polypeptide comprises an amino acid sequence selected from the group consisting of: (a) SEQ ID NO:1; (b) SEQ ID NO:1 from amino acid 20 to amino acid 328; (c) SEQ ID NO:1 from amino acid 21 to amino acid 328; (d) SEQ ID NO:1 from amino acid 22 to amino acid 328; (e) SEQ ID NO:3; and (f) SEQ ID NO:3 from amino acid 20 to amino acid 326.

Applicants' claim 74, from which claims 57-66 depend, and claim 67, from which claims 69-73 depend, both require at least one chemokine polypeptide covalently attached to at least one heterologous polypeptide, wherein the heterologous polypeptide is an Fc polypeptide, wherein the chemokine polypeptide comprises SEQ ID NO: 1 from amino acid 22 to amino acid 328.

The Fc polypeptide required by the present claims is not disclosed in the claims of the '296 patent. Therefore, the pending claims subject to the rejection are distinct from the claims of the '296 patent on at least this basis. Moreover, this distinction is a patentable distinction because there is no suggestion of an Fc polypeptide, or a polypeptide with the features of the Fc polypeptide, in the claims of the '296 patent. In view of the foregoing comments, reconsideration and withdrawal of the rejection for obviousness-type double patenting is requested.

The Commissioner is authorized to charge any fees that may be required or credit any overpayment of same to Deposit Account No. 50-0311 (Reference No. 22058-590 DIV CON).

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